

---

---

LEASE AGREEMENT

Between

THE CITY OF MIAMI

and

GENERAL SERVICES ADMINISTRATION (GSA)

OF THE

UNITED STATES OF AMERICA

---

---

NOTICE

Attached is the Miami Law Enforcement Building Lease Agreement. This agreement, between the CITY OF MIAMI (City) and GENERAL SERVICES ADMINISTRATION (GSA), was signed on October 22, 1987. This agreement was based upon Public Law 99-591 adopted October 30, 1986.

This Agreement was negotiated with the City of Miami. The City neither profits from developing this project nor do they benefit from ad valorem taxation. The City is providing this service to the Government in support of the law enforcement effort in South Florida. The agreement is unique as it is not the "standard" leasing agreement normally found between GSA and a lessor.

Should the reader have questions concerning this agreement, please call Mr. Mike Roper, FTS 242-7651, GSA Contracting Officer or Mr. Tom Maguire, FTS 242-3107 Director of Planning.

## Table of Contents

	Introduction .....	1
1.1	Definitions .....	2
2.1	Initial Term .....	6
2.2	Renewal Terms .....	6
2.3	Option to Purchase.....	6
2.4	Redelivery of the Project Land.....	7
2.5	Construction Documents .....	7
2.6	Recitals .....	8
3.1	Annual Rental .....	8
3.2	Additional Rent .....	9
3.3	Ad Valorem Taxation .....	9
4.1	Three Step Plan .....	9
4.2	Standards of Performance .....	10
5.1	STEP 1 - FINANCING General .....	10
5.2	Method, Implementation, and Procedures .....	11
	a. Financial Advisor to City.....	11
	b. Underwriting Services.....	12
	c. Bond Counsel.....	12
6.1	STEP 2 - SITE ACQUISITION General .....	12
6.2	Appraisal Fees .....	13
6.3	Title .....	13
6.4	Site Acquisition by Condemnation .....	13
6.5	Governmental Purpose .....	14
6.6	Additional Improvements .....	14
7.1	STEP 3 - PROJECT DEVELOPMENT - General .....	15

7.2	Government Approvals .....	15
7.3	Changes In The Work .....	16
7.4	Construction Completion Date.....	17
7.5	Special Requirements .....	17
7.6	Government Representative .....	19
8.1	Government Default.....	19
	a. Failure Payment of Money.....	19
	b. Failure-Performance of Other Covenants.....	20
	c. Remedies for Government Default.....	20
8.2	City Default.....	21
	a. Failure Performance of Covenants.....	21
	b. Remedies for City Default.....	22
8.3	Exclusive Remedies.....	23
8.4	Excess Project Cost Default.....	23
9.1	Insurance.....	24
9.2	Comprehensive General Liability Insurance...	26
9.3	Casualty Insurance.....	27
10.1	Anti-Deficient Act.....	27
10.2	Governmental Purposes.....	28
10.3	Government Approval.....	28
10.4	Approval and Consent.....	28
10.5	Force Majeure.....	28
10.6	Governing Law.....	29
10.7	Severability.....	29
10.8	Quiet Enjoyment by Government.....	30
10.9	Repair, Maintenance, and Replacement.....	30
10.10	Assignment and Subleasing.....	31

11.1	Method and Addresses.....	31
11.2	Change of Address.....	32
12.1	Required Amendments.....	32
12.2	Amendments.....	33
13.1	Purposes.....	33
13.2	Removable Property.....	33
13.3	Negotiations.....	33
13.4	Utilities.....	34
13.5	Repair and Maintenance Responsibilities.....	34
13.6	Officials Not to Benefit.....	35
13.7	Minority Participation.....	35
13.8	Government Regulations.....	35

### MIAMI LEASE AGREEMENT

THIS LEASE AGREEMENT entered into this 22nd day of October, 1987, by and between the City of Miami, a municipal corporation of the State of Florida, hereinafter referred to as ("CITY" or "LESSOR"), and the United States of America, acting by and through the General Services Administration, its agency, in accord with 40 U.S.C. 751 et. seq., 40 U.S.C. 490(h) and Public Law 99-591, hereinafter referred to as ("GOVERNMENT" or "LESSEE").

### W I T N E S S E T H:

WHEREAS, pursuant to Public Law 99-591 adopted October 30, 1986, the GOVERNMENT is authorized to acquire a building constructed or acquired by or on behalf of the State of Florida or a political subdivision thereof by lease in Miami, Florida; and

WHEREAS, the CITY has determined that it would be advantageous to the CITY to enhance the offices of the United States Courts, United States Attorney, and other federal agencies in the CITY; and

WHEREAS, on October 29, 1986, the GOVERNMENT, acting by and through the General Services Administration, and the CITY, acting by and through the City Manager, entered into a Memorandum of Understanding expressing their intent to enter into negotiations for the CITY to construct and lease to the GOVERNMENT, a building to house the United States Attorney's Office and other Federal law enforcement agencies in Miami; and

WHEREAS, the parties have agreed that the amount of lease payment will be a negotiated figure calculated to reimburse the CITY all direct and indirect expenses while providing the GOVERNMENT with suitable space to house its law enforcement agencies at a reasonable price in the shortest period of time possible; and

WHEREAS, pursuant to City Commission Resolution No. 87-746, the City Manager was authorized to negotiate and execute a Lease Agreement with the GOVERNMENT concerning the acquisition, development, construction and operation of an office building in the CITY OF MIAMI;

NOW THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

## I

### DEFINITIONS

#### 1.1 Definitions

All terms defined in any part of this Agreement shall have the same meaning throughout this Agreement. The following terms shall have the meanings set forth opposite such terms, or in the specified provisions of this Agreement:

Additional Rent - See Section 3.2.

Agreement or Lease or Instrument - This Lease Agreement, as the same may be modified or amended from time to time.

Annual Rental - See Section 3.1.

Bonds - CITY OF MIAMI taxable Revenue Bonds, (in the amount of thirty million dollars (\$30,000,000) (or such other amount as agreed upon by the Parties) that may be issued at some later date.

Building - A building of approximately 250,000 square feet to house the United States Attorney's Office, the United States Courts and other federal agencies.

Certificate of Occupancy - The certificate to be granted by the CITY upon completion of all Development Work and Construction Work in accordance with the Construction Documents and the satisfaction of all Legal Requirements of such certificate for the Building, enabling the Building to be utilized for the purposes set forth in this Agreement.

Commencement Date - The effective date when this initial thirty (30) year term begins is when the CITY issues a Certificate of Occupancy and the GOVERNMENT approves the substantially completed construction of the leased space.

Construction Documents - See Section 2.5.

Construction Work - Supply the construction and installation on the Project Land of all materials, supplies, equipment, tools, labor, supervision, utilities, transportation and other materials and services to complete the construction in substantial compliance with the Construction Documents.



Contractor - The individual, firm, partnership, corporation or other entity that does the Construction Work.

Developer - The individual who develops the Project or, in the event the CITY and GOVERNMENT determine to use a turnkey development process, the successful proposer.

Development Work - All work performed by Developer.

Replacement and Repair Expenses - See Section 10.9.

Initial Term - See Section 2.1.

Legal Requirements - The laws, rules and regulations of the United States of America, State of Florida and all other governmental bodies having jurisdiction over the Building or the Project Land, or any part thereof that are in effect on the date of execution and as may be subsequently amended, modified or adopted from time to time by due governmental process.

Project - All matters described below including but not limited to the Work and other work performed and to be performed by CITY, Developer, Contractor or GOVERNMENT or on behalf of the GOVERNMENT: (i) Development Work, (ii) Construction Work, (iii) acquisition of, and site work on, the Project Land, and (iv) all other matters reasonably incidental to development, and construction of the Building.

Project Costs - All costs incurred by or on behalf of the CITY or its designee's, or Developer, or Contractor, or GOVERNMENT in performance of their

respective obligations under this Lease, including but not limited to site acquisition, design, construction, bond counsel, appraisals, etc.

Excess Project Cost - Any Project Cost which exceeds thirty million dollars (\$30,000,000), for any reason whatsoever, for Development Work, Construction Work or any changes in the Work, including but not limited to any costs directly or indirectly paid or incurred by the CITY in fulfilling it's obligations hereunder, delays, force majeure or any reason whatsoever caused by act or omission of the GOVERNMENT or the CITY (including any negligent acts of the CITY), the GOVERNMENT shall be solely responsible for the Project Costs in excess of \$30,000,000.

Project Land - The Project Land is located in Miami, Florida and is comprised of 12 lots of Block 78 N, located between Northeast 4th and 5th Streets and Northeast 1st Avenue and Miami Avenue, more particularly described on Exhibit "A", as attached.

Renewal Terms - See Section 2.2.

Term - Initial Term and Renewal Terms, if applicable, as set forth in Section 2.

Work - Development Work, and Construction Work together with all other obligations of CITY, Developer or Contractor under this Lease or any other agreement entered into in the acquisition, development, and construction of the Project Land and/or the Building.

## II

### GENERAL TERMS AND CONDITIONS

#### 2.1 Initial Term

The Initial Term of this Lease shall be for thirty (30) years beginning on the Commencement Date (the "Initial Term").

#### 2.2 Renewal Terms

The GOVERNMENT has two (2) options to renew this Lease after the Initial Term. Each renewal option shall be for a period of twenty (20) years and may be exercised by the GOVERNMENT giving notice in writing to the CITY not less than one (1) year prior to expiration of the Initial Term or the first or second renewal period as applicable. In the event the GOVERNMENT exercises an option to renew, the GOVERNMENT shall pay the CITY no further rent or other payment except the actual and reasonable costs including liability insurance. At the end of the Initial Term and any time during the renewal terms, the GOVERNMENT has an option to receive a Quit Claim Deed in fee simple title to the premises from the CITY in consideration for One Hundred Dollars (\$100.00).

#### 2.3 Option to Purchase

a. The GOVERNMENT will have the right at any time to assume outstanding indebtedness incurred by the CITY and to reimburse the CITY the outstanding unamortized expenses the CITY has incurred in acquiring and

providing the Project Land, the Building and any improvements related thereto leased to the GOVERNMENT. In consideration of such assumption and reimbursement, the CITY shall execute and deliver a fee simple title to the land and improvements by Quit Claim Deed to the United States. This option shall be assignable by the United States provided that the GOVERNMENT shall nevertheless remain liable to the CITY and the holder of any Bonds or debt obligations issued by the CITY for the Project.

b. The CITY agrees not to alienate or encumber the title to the Premises, or any part thereof, before commencement of, or during the Term, absent the prior written consent of the GOVERNMENT.

2.4 Redelivery of Project Land

Subject to the GOVERNMENT's right to purchase the Building and the Project Land, the GOVERNMENT at the expiration of this Lease including the renewal terms, if applicable, shall peaceably and quietly quit and surrender to the CITY, the Building and Project Land, in good order and condition.

2.5 Construction Documents

For the purpose of this Lease, Construction Documents shall consist of final working drawings and specifications including (without limitation) the following information:

a. Definitive site plans and specifications,

- b. Definitive architectural drawings and specifications,
- c. Definitive foundation and structural drawings and specifications,
- d. Definitive electrical and mechanical drawings specifications, and
- e. Final drawings and specifications for all LESSEE improvements.

2.6 Recitals

The parties represent, warrant and covenant that the foregoing recitals are accurate, which recitals are incorporated herein by reference.

III

RENT

3.1 Annual Rental

The rental payments for the Initial Term shall be in an amount calculated to reimburse the CITY all its actual costs, including but not limited to, CITY's financing, acquisition, design, development, construction, and other Project Costs (including fees and expenses), provided that such expenses have been approved by GOVERNMENT. The annual rental shall be paid to CITY monthly in arrears in equal monthly installments or, if necessary, paid in some other mutually agreed time frame which would enable CITY to timely pay debt service on obligations issued to finance the Project.

3.2 Additional Rent

The additional rental payment for the Initial Term and the Renewal Terms shall be in an amount calculated to pay for the cost of insurance premiums, and to reimburse the CITY for any other expenses which the CITY has incurred provided that such expenses have been approved by GOVERNMENT.

3.3 Ad Valorem Taxation

Neither land, nor improvements, nor the lease shall be subject to CITY ad valorem real estate taxes nor City personal property taxation. In the event, a tax is levied on this lease and/or the real and/or personal property by an entity outside the control of the CITY, the GOVERNMENT will assume all costs to defend against or pay such taxes. The CITY will not assume any tax liability relating to the Project Land Building and the Lease.

IV

DESCRIPTION OF THE WORK

4.1 Three Step Plan

The CITY and the GOVERNMENT agree that subject to the terms of this Lease, the CITY will enter into a Three Step Plan to: (1) provide financing for this undertaking (2) acquire a site and (3) procure a development of the site to include plans, specification, site preparations and construction of

not more than 250,000 square feet of space for the housing of the United States Courts, United States Attorney, Federal Law Enforcement Agencies and/or such other Federal Governmental activities as the GOVERNMENT shall deem appropriate.

4.2. Standards of Performance

The Parties acknowledge that they are Trustees for the Citizens of Miami and of the United States and as such, the Parties are responsible to see that sound and honest business decisions are made, and that cost controls are exercised in planning and decision making. The Parties are determined that Federal, State and Local Laws will be met in all matters under this Lease.

V

STEP 1 - FINANCING

5.1 General

The plan, method and all aspects of the financing arrangements to be used by the CITY to acquire the property and/or construct the Building (in the event that CITY does not elect to develop the Project by a turnkey process) shall include but not be limited to any and all aspects of the use of taxable municipal revenue bonds or private funding and shall include all costs of financing, including but not limited to, brokerage fees, attorneys' fees and other fees. All financing associated with this project will be made through the competitive process.

The CITY and the GOVERNMENT may agree that the entire project be financed through the issuance of CITY of Miami taxable revenue bonds in which case, payment of principal and interest (debt service) and any other fees returned thereto, would rely solely on the rental payments of the GOVERNMENT, or if the GOVERNMENT exercises its option to purchase, then the GOVERNMENT will assume bond payments and will reimburse the CITY the outstanding unamortized expenses. The CITY by this Agreement is in no way obligated to pledge, commit, use etc., any revenues, assets, taxes or other funds of the CITY, other than rental payments by the GOVERNMENT to pay for or finance Project Costs. Bond holders will rely solely on the timely payment of said rental for retirement of the bonds.

5.2 Method. Implementation. and Procedures

The parties agree that each has vital interests in the methods used, implementation of procedures to obtain funds necessary to carry out this project and the payments of expenses. All matters having to do with the financing of this project shall be subject to the prior written approval by the GOVERNMENT.

a. Financial Advisor to CITY

The Parties agree that reasonable competition will be or has been used in acquiring the services of a financial advisor to the CITY. Such selection will be based upon the fee charged and



the quality of the services. The advisor in this capacity will prepare the bond document and arrange the marketing for the Bonds.

b. Underwriting Services

The Parties agree that reasonable competition will be made by the CITY in acquiring the services of an underwriter. Such selection will be based upon the fee charged (points) and the interest rate.

c. Bond Counsel

The Parties agree that reasonable competition will be or has been made in acquiring the services of Bond Counsel. Such selection will be (was) based upon fee, quality of service, expenses, and other acceptable industry criteria.

VI

STEP 2 - SITE ACQUISITION

6.1 General

All matters having to do with the location and acquisition of the Project Land shall be subject to the prior written approval of the GOVERNMENT, and such matters shall include but not be limited to, the prices to be paid for parcels, selection of and the amount of the fee, if any, to be paid to an appraiser, institution of condemnation proceedings and prior approval of each title and deed. In any event, the

CITY will purchase options or, if necessary, through condemnation acquire the Project Land and associated real property rights necessary for the accomplishment of this Project.

6.2 Appraisal Fees

If the CITY incurs appraisal fees or expenses for appraisal(s) of a site selected by the GOVERNMENT, and if the GOVERNMENT has approved in writing the appraiser(s) selected and the amount(s) of such fees or expenses, the GOVERNMENT shall reimburse the CITY for said fees or expenses. The GOVERNMENT shall reimburse the CITY for said fees or expenses notwithstanding the fact that said fees or expenses were incurred prior to the date on which the Lease is executed.

6.3 Title

The title to be acquired by the CITY to the Project Land selected shall be a fee simple title with only such exceptions, if any, as shall be approved by the GOVERNMENT.

6.4 Site Acquisition by Condemnation

The CITY shall obtain the written approval of the GOVERNMENT prior to initiating condemnation proceedings. In the event that the CITY acquires the Project Land through condemnation, then GOVERNMENT agrees to pay CITY any and all costs associated with such condemnation proceedings including but not limited to attorney's fees, expert fees and court costs.

If the CITY is unable to acquire the entire Project Land then the GOVERNMENT, upon written notice from the CITY that acquisition of the entire Project Land is impossible, shall reimburse the CITY, within sixty (60) days of such written notice, for the costs and expenses, including but not limited to the cost of the land, relating to any parcel of the Project Land, if any, acquired by the CITY and any and all costs relating to the attempted acquisition of the Project Land or any parcel of the Project Land. The CITY shall convey said Project Land to the GOVERNMENT upon the CITY being totally reimbursed for any and all of the aforementioned costs.

6.5 Governmental Purpose

The CITY has determined that a governmental purpose of the CITY will be served by the fulfillment of this Lease, and in particular by the acquisition of the selected site.

6.6 Additional Improvements

The CITY will give the GOVERNMENT the right at all times during this Term to add more buildings or other improvements on the Project Land at the expense of the GOVERNMENT and will forthwith upon written request from the GOVERNMENT convey such real property to the GOVERNMENT, without further costs of site acquisition to the GOVERNMENT in the event the GOVERNMENT exercises this right provided that the GOVERNMENT reimburses CITY for any and all costs and expenses related thereto.

## VII

### STEP 3 - PROJECT DEVELOPMENT

#### 7.1 General

It is the intent of the Parties that this project will go forward as a turnkey development contract utilizing the CITY's procurement process whenever applicable, as defined in the CITY's Charter and Code. Notwithstanding this intent, GOVERNMENT approval shall be had in writing prior to implementation of procurement methods, issuance of Solicitations, or Requests for Proposals. All contracts shall be awarded competitively. GOVERNMENT approval shall be obtained prior to the award of any contract for development, for an architect-engineering contract and for a construction contract, if any of these matters are contracted for separately from the development contract.

#### 7.2 Government Approvals

The methods used by the CITY to obtain a contract with a Developer, an Architect-Engineer, or a General Contractor shall be subject to the prior written approval of the GOVERNMENT. The selection of any such persons, firms or entities to perform any matters necessary for the implementation of this Lease shall be subject to the prior written approval of the GOVERNMENT. The amount of any monies to be paid under any such contract or contracts shall be subject to such prior written approval of the GOVERNMENT.

Changes In The Work

All changes for any portions of the Work require prior written approval by the GOVERNMENT. In the event that the selection of an Architectural/Engineering (A/E) firm, or a general contractor for construction is to be made by the Developer and not by the CITY, then GOVERNMENT approval shall be necessary prior to the Developer making these selections. The Construction Documents and PROJECT construction are subject to GOVERNMENT written approval. The GOVERNMENT reserves the right to direct change orders to all Construction Documents pertaining to this project at anytime. Should such change order(s) be necessary, the following paragraphs of Federal Acquisition Regulations (FAR) 52.243-4-CHANGES (APR 1984); General Services Acquisition Regulation (GSAR) 552.243-71-Equitable Adjustments; GSAR 552-243-70-Pricing of Adjustment (APR 1984); FAR 52.215-2-Audit-Negotiation (APR 1984) and the Contracts Disputes Act are hereby enforceable. The Contracts Disputes Act (41 USC 601-13) applies to this Agreement. Refer to Exhibit "B", as attached.

Both the GOVERNMENT and the CITY contemplate that the total Project Costs shall not exceed Thirty Million Dollars (\$30,000,000). In the event that a change order would result in the total Project Costs exceeding the Thirty Million Dollars limitation set forth in this Agreement, the GOVERNMENT agrees to amend this Lease by

committing within sixty (60) days of notification of such Excess Project Cost to pay such Excess Project Cost or be declared in default and be subject to the remedies contained in Section VIII of this Lease.

In the event that a change order results in a reduction of the Project Cost below Thirty Million Dollars (\$30,000,000), the difference between the reduced Project Cost and the original Project Cost of \$30,000,000 will be used to reduce the total indebtedness of the GOVERNMENT on this lease.

7.4 Construction Completion Date

Subject to the force majeure provision contained in this Agreement, construction shall be completed within two years after the date the Developer and/or Contractor have contracted with CITY to build the Project, the date the Project Land is acquired by CITY or when either permanent or interim financing for the Work has been attained, whichever is the later.

7.5 Special Requirements

The following specific requirements shall apply:

- a. The GOVERNMENT shall furnish, and the CITY will include as requirements for performance in the architect-engineering services contract, certain technical directives to be complied with and technical specifications to be incorporated in the Construction Documents that are to be used to construct the Building to be leased by the

GOVERNMENT. These technical directives and technical specifications shall include, but not be limited to, physical dimensions, exterior materials, interior materials and finishes, structural capacity, mechanical and electrical systems, fire protection, safety, handicapped accessibility and elevators.

- b. The Construction Documents shall require the approval of the GOVERNMENT prior to the commencement of the Construction Work. The GOVERNMENT's approval of construction completed shall be required before the GOVERNMENT shall be obligated to begin rental payments for the space leased. Such approval shall not be unreasonably withheld.
- c. A building permit for the Building shall be issued within fifteen (15) months from July 23, 1987, or the GOVERNMENT will be technically in default, pursuant to Section VIII of this Lease, and the CITY Commission may terminate this Lease. In the event that the CITY Commission exercises its right to terminate this Lease, pursuant to this Section 7.5 (c), then the CITY shall be entitled to the remedies specified in Section 8.1 (c) of this Agreement.

7.6

Government Representative

The GOVERNMENT will be represented on or off the site by its Contracting Officer who will be assisted by a Project Officer and Project Engineer. Such Contracting Officer is authorized to give GOVERNMENT approval where such approval is required under this Agreement.

VIII

DEFAULT AND REMEDIES

8.1

Government Default

The following events are hereby defined as a "GOVERNMENT Default":

a. Failure-Payment of Money

Failure of the GOVERNMENT to pay any Annual Rentals, Additional Rent or taxes or any other payments of money as herein provided or required when due and the continuance of such failure for a period of sixty (60) days. In the event that any payment or installment of Annual Rental is not paid to the CITY on the date, the same becomes due and payable, the GOVERNMENT covenants and agrees to pay to the CITY interest on the amount thereof from the date such payment or installment became due and payable to the date of payment thereof, in accordance with the Prompt Payment Act, Public Law 97-177 (96 Stat. 85, 31 USC 1801) which provides for the payment of interest on amounts due.



b. Failure-Performance of Other Covenants. etc.

Failure of the GOVERNMENT (as to the obligations of GOVERNMENT hereunder) to perform any of the other covenants, conditions, and agreements which are to be performed by the GOVERNMENT in this Agreement, and the continuance of such failure for a period of sixty (60) days after notice thereof in writing from the CITY to the GOVERNMENT, (which notice shall specify the respects in which the CITY contends that the GOVERNMENT has failed to perform any such covenants, conditions, and agreements), said failure shall constitute a GOVERNMENT default.

c. Remedies for GOVERNMENT Default

If a GOVERNMENT default shall occur, the GOVERNMENT shall:

1. Reimburse the CITY for all expenditures, with interest, previously approved by the GOVERNMENT within ninety (90) days.
2. In the event the CITY has acquired time financing for the purpose of site acquisition, which has been previously approved by the GOVERNMENT, the GOVERNMENT will assume the indebtedness, including accrued interest incurred and will pay off the indebtedness as specified in the financing document.

3. Assume all debt obligations including accrued interest of the CITY, redeem all bonds including accrued interest, and/or pay in full any outstanding debt.

d. In the event that the Prompt Payment Act or some other public law is not in effect which provides for the payment of interest on amounts due, the GOVERNMENT agrees to pay CITY interest at the then prime interest rate (or if there is no prime interest rate, then some other equivalent rate) for any and all amounts due under this Agreement.

The remedies listed above shall be the exclusive remedies of the CITY and it is the GOVERNMENT's intention pursuant to these remedies to reimburse the CITY for any and all approved costs, expenses, fees and monies paid by CITY pursuant to this Agreement.

The CITY, upon the GOVERNMENT's action to remedy, shall deliver to the GOVERNMENT title to land and improvements by Quit Claim Deed and deliver all documents associated with the indebtedness, if any.

## 8.2 CITY Default

The following event is hereby defined as a "CITY Default":

### a. Failure-Performance of Covenants

A material noncompliance or breach by the CITY of the covenants, conditions, and agreements of this lease shall constitute CITY default.

However, only the failure of the CITY to cure and the continuance of such failure of the CITY for a period of ninety (90) days after notice thereof in writing from the GOVERNMENT (which notice shall specify the respects in which the GOVERNMENT contends the CITY has materially noncomplied or breached the covenants, conditions, and agreements of this Lease) shall constitute a "CITY default". If a default is one that cannot be cured within ninety (90) days and the CITY within such ninety day period has acted reasonably in commencing a cure and thereafter actively continues diligently to prosecute all actions necessary to cure such defaults, such failure to cure shall not constitute a "CITY default".

b. Remedies for CITY Default

If a CITY default shall occur, the GOVERNMENT's only and exclusive remedy shall be the right to terminate this lease agreement. In the event of such termination, the GOVERNMENT shall reimburse the CITY all previously approved direct expenses associated with the Work including but not limited to costs relating to the acquisition, financing, development and construction of the Building on the Project Land and assume any and all outstanding debt(s) including direct assumption of bond payments and

the CITY shall deliver to GOVERNMENT title to land and improvements by Quit Claim Deed, and deliver all Construction Documents and all materials related to this lease project. The CITY shall assign to the GOVERNMENT its rights under all related contracts upon full reimbursement to the CITY of monies expended by CITY and payment of all outstanding obligations of CITY relating to the Project.

8.3 Exclusive Remedies

The CITY and the GOVERNMENT recognize that the remedies contained in this Section VIII of the Lease shall be deemed the only and exclusive remedies of the CITY and the GOVERNMENT, and that no other remedy conferred by law may be instituted by the CITY or the GOVERNMENT.

8.4 Excess Project Cost Default

Both the GOVERNMENT and the CITY contemplate that the total Project Costs shall not exceed thirty million dollars (\$30,000,000). In the event that at any time subsequent to the execution of this Agreement, the total Project Costs are projected by CITY to exceed the thirty million dollar limitation set forth in this Agreement, the GOVERNMENT agrees to amend this Lease by committing within sixty (60) days of notification of such Excess Project Cost to pay such Excess Project Cost or be declared in default and be subject to the remedies contained in this Section VIII of the Lease.

## IX

### INSURANCE

#### 9.1 General

CITY shall purchase and keep in effect at all times during the Term of this Agreement such insurance as CITY deems, in its sole discretion, necessary to reasonably protect its interests. The insurance purchased by CITY shall be for such coverage and amounts that the CITY deems, in its sole discretion, will protect the CITY from paying any judgment or claim, or any costs or fees (including attorney fees') related thereto, from City revenues or funds. Such insurance standards and coverages shall be subject to evaluation by the CITY on an annual basis and GOVERNMENT agrees to pay as Additional Rent an amount equal to the cost of all insurance(s).

Should the Project Land or Building be damaged by fire or other casualty, the GOVERNMENT shall have the right to cause the damage to be repaired and the cost of the repair shall be borne by the GOVERNMENT. If it can be determined that any such loss or part thereof, shall be the fault of a third party, (i.e., a contractor or contractors, visitors to the building or any other person, persons or organizations) except the CITY, then and in that event, the GOVERNMENT may take all necessary actions to cause such third party to pay such costs and the CITY hereby assigns all rights to

the proceeds or work effort received from such third party to the GOVERNMENT. In no event shall the CITY be liable for any damage caused to the Project Land or Building by fire or other casualty. If no third party or parties shall be found liable or if found liable but unable to pay damages then the sole costs of such repairs shall be that of the GOVERNMENT.

This agreement shall terminate if the parties cannot agree on such insurance or if the CITY is unable to purchase and keep in effect at all times such coverages and amounts of insurance it deems necessary. If this agreement is terminated, pursuant to this Section 9, the GOVERNMENT will be in default and subject to the remedies set out in Section 8.1 of this Agreement.

In the event of a casualty to the Project Land or Building including but not limited to fire, windstorm, and hurricanes, during the term of this Lease, the GOVERNMENT shall, at its sole option, effect necessary repairs or declare the Building a total loss. In the event the GOVERNMENT shall elect to repair the Building, the full amount of the rental payments shall continue. Should the GOVERNMENT determine the Building has been so damaged as to be a total loss, the GOVERNMENT shall assume all outstanding indebtedness and any other outstanding costs to the CITY and reimburse the CITY for any and all costs duly expended

by CITY and not reimbursed by GOVERNMENT. In consideration of the GOVERNMENT assuming all such indebtedness, the CITY shall transfer title to the remaining real property by conveyance of a Quit Claim Deed in fee simple title.

The intent of this Section is that the GOVERNMENT shall self insure against casualty loss and that, regardless of casualty loss, the GOVERNMENT shall continue rental payments without abatement or, at its option shall assume all indebtedness should the Building be totally destroyed.

GOVERNMENT hereby releases and holds the CITY harmless from any and all liability or responsibility for anyone claiming through or under it by way of subrogation or otherwise for any loss or damage to the Project Land or Building caused by fire or any other extended coverage casualties, even if such fire or other casualty shall have been caused by the fault or negligence of the CITY, or anyone acting on behalf of the CITY, including but not limited to, its agents, employees, representatives, etc.

9.2 Comprehensive General Liability Insurance

CITY shall keep the Project Land and Building insured against claim for bodily injury, death or property damage occurring in, on or about the Project Land and Building from the date(s) of site acquisition, through the Construction phases, and throughout the

term of this Lease and its options, in minimum amounts of \$1,000,000 in respect to bodily injury or death to one person, \$3,000,000 in respect to any one occurrence and \$1,000,000 for property damage. CITY may, at any time, purchase and keep in effect such additional liability insurance CITY deems reasonably necessary. GOVERNMENT agrees to pay as Additional Rent an amount equal to the cost of said additional insurance.

9.3 Casualty Insurance

CITY shall require the developer/contractor, architect, engineer, subcontractors, etc. to maintain Casualty insurance, Builders Risk, Professional Liability insurance and any other insurance it deems necessary at coverage amounts approved by the GOVERNMENT and the CITY.

X

GENERAL PROVISIONS

10.1 Anti Deficiency Act

Subject to the terms of this Lease, in order to meet the requirements of the Anti-Deficiency Act, 31 USC 1341, the Parties agree that the total rental payments over thirty (30) years and the total indebtedness of the United States for this project will not exceed an amount required to repay all financing costs necessary to accomplish a project which Project Costs shall not exceed thirty million (\$30,000,000) dollars subject to the Project Cost



Excess provisions set forth in Section 8.3 of this Lease. As more specifically set out in this Lease, dollar amounts may be changed by supplemental mutual agreements in the future.

10.2 Governmental Purposes

The Parties agree that this Lease serves the Governmental Purposes of the CITY and of the GOVERNMENT.

10.3 Government Approval

The CITY will secure specific written approval of the GOVERNMENT before the CITY takes any action in pursuance of this Agreement which requires the expenditure of funds.

10.4 Approval and Consent

Wherever in this Lease the approval or consent of any party is required, it is understood and agreed that such approval or consent will not be unreasonably withheld or delayed, unless this Contract specifically indicates otherwise.

10.5 Force Majeure

Except as otherwise expressly provided in this Contract, neither Party shall be obligated to perform and neither shall be deemed to be in default hereunder, if performance of a non monetary obligation is prevented by the occurrence of any of the following (herein called "Force Majeure" or "Event of Force Majeure") acts of God, strikes, walkouts, other

industrial disturbances, acts of the public enemy, laws, rules and regulations of applicable governmental bodies, wars or warlike action (whether actual, impending, or expected and whether de jure or de facto), arrest or other restraint of government, (civil or military), blockades, insurrections, riots, epidemics, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, civil disturbances, explosions, breakage or accident to equipment or machinery, confiscation or seizure by any government or public authority, nuclear reaction or radiation, radioactive contamination or any other causes whether for the kind herein enumerated or otherwise, that are not reasonably within the control of the party claiming the right to delay performance on account of such occurrence.

10.6 Governing Law

This Agreement shall be governed by Federal Law or the laws of the State of Florida, whichever law shall be governing, and venues shall be in the CITY OF MIAMI, Dade County, Florida,

10.7 Severability

If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this initial Agreement or the application of such term or provision to the persons or

circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

10.8 Quiet Enjoyment by Government

CITY agrees that if GOVERNMENT pays the Annual Rental and Additional Rental and other charges herein provided and shall perform all of the covenants and agreements herein stipulated to be performed on GOVERNMENT'S part, GOVERNMENT shall at all times during said Term, have the peaceable and quiet enjoyment and possession of the building on the Project Land without any manner of hindrance from CITY or any other persons lawfully claiming through CITY.

10.9 Repair, Maintenance, and Replacement

The GOVERNMENT shall, throughout the Term of this Agreement, at its own cost, and without any expense to the CITY, keep and maintain the Building and Project Land, and all appurtenances thereto, including sidewalks adjacent thereto, in good, sanitary, and, neat order, condition and repair. The CITY shall not be obligated to make any repairs, replacements (extraordinary or ordinary), or renewals of any kind, nature, or description, whatsoever to the Building or improvements on the Project Land.

10.10 Assignment and Subleasing

The GOVERNMENT shall not assign its rights in this Lease or sublet the Building or any portion thereof without the prior written consent of CITY. The GOVERNMENT recognizes and agrees that the terms of this Lease shall be renegotiated in the event that GOVERNMENT transfers any of its rights under this Lease to a Third Party (i.e. any party other than GOVERNMENT).

XI

NOTICES

11.1 Method and Addresses

All notices, demands, or other writings required or allowed in this Agreement must be in writing and shall be served: (i) by depositing the same in the United States mail addressed to the party to be notified, postage prepaid, registered or certified mail, return receipt requested; (ii) by delivering the same in person to such party; or (iii) by prepaid telegram, telex, private or commercial telecopy, or Federal Express or similar delivery service. Notice given in accordance with (i) above shall be effective three (3) days after being deposited in the U. S. mail. Notice given in accordance with (ii) or (iii) above shall be effective upon receipt at the address of the addressee. For the purposes of notice, the addresses

of the parties shall be as follows:

TO THE CITY: Cesar H. Odio  
City Manager  
City of Miami  
3500 Pan American Drive  
Miami, Florida 33133  
Telecopy No.: (305) 285-1835

WITH COPIES TO: Lucia A. Dougherty  
City Attorney  
City of Miami  
1100 AmeriFirst Building  
One Southeast Third Avenue  
Miami, Florida 33131  
Telecopy No.: (305) 374-4730

Christopher G. Korge  
Assistant City Attorney  
City of Miami  
1100 AmeriFirst Building  
One Southeast Third Avenue  
Miami, Florida 33131

TO THE GOVERNMENT: Mr. Michael E. Roper  
Contracting Officer (4PEA)  
General Services Administration  
Fourth Floor  
75 Spring St., SW  
Atlanta, GA 30303

11.2 Change of Address

The address or party to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by fifteen (15) days advance written notice given by such party as above provided.

XII

AMENDMENTS

12.1 Required Amendments

The GOVERNMENT recognizes that this Lease shall be amended either prior to or simultaneously with an

agreement to be entered into between the CITY and DEVELOPER. In the event that the CITY and GOVERNMENT cannot agree on an Amendment to this Lease and such Amendment is necessary for the CITY to enter into an Agreement with DEVELOPER, then the GOVERNMENT shall be deemed in default as more specifically described in Section VIII of this Lease, and this Lease shall terminate.

12.2 Amendments

No amendment shall be made to this Lease unless in writing and signed by the GOVERNMENT and CITY.

XIII

OTHER PROVISIONS

13.1 Purposes

It is the purpose of CITY and GOVERNMENT that the minimum rent set forth herein shall be net to the CITY, and that all costs, expenses, and other obligations of every kind and nature whatsoever, relating to the use, occupancy and operation of the Building and Project Land and on the Building and Project Land shall be paid for and assumed by GOVERNMENT.

13.2 Removable Property

GOVERNMENT retains the title to all removable property placed on the property by GOVERNMENT.

13.3 Negotiations

In no event shall the CITY or its Agents, Developers, Contractors, or Officials enter into

negotiations concerning the space to be leased with representatives of other Federal Agencies or the Courts. The sole party representing the United States with whom the CITY shall negotiate is GSA.

13.4 Utilities

GOVERNMENT shall pay for all utilities used or consumed in or upon the demised premises, including but not limited to sewer, electricity, water, telephone, heat and trash pickup.

13.5 Repair and Maintenance Responsibilities

GOVERNMENT shall, at GOVERNMENT'S own expense, keep the demised premises including both interior and exterior of the building, and including without limitation, sidewalks, electrical, plumbing, heating, air-conditioning and other mechanical installations therein, all doors, and all the plate glass and door window glass in good order and proper repair, and replace, if necessary, using materials and labor of the kind and quality equal to the original work. GOVERNMENT shall also be responsible for, and shall maintain and keep in good order and repair or cause to be kept in good order and repair, the roof, structure, walls and foundation of the demised premises and shall provide landscaping services. CITY shall have no obligation to repair, maintain, replace, alter or modify the Building and Project Land or any part thereof, after initial acceptance by GSA.

13.6 Officials Not to Benefit

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

13.7 Minority Participation

The parties will be required to comply with all applicable federal, state and local affirmative action legislation and regulations, including City of Miami Minority and Women Business Affairs and Procurement Ordinance No. 10062. For purposes of accomplishing this project whether by public or private means, the more restrictive City of Miami legislation and regulations shall apply.

13.8 GOVERNMENT Regulations.

The CITY shall include in CITY'S contract(s) for the development of the Project with Developer and/or Contractor the GOVERNMENT regulations set forth in Exhibit C.

WITNESSES:

GENERAL SERVICES ADMINISTRATION

(b) (6)

(b) (6)

By:

(b) (6)

Maxie E. Poole  
Contracting Officer

Date Executed:

10/22/87



WITNESSES:  
(b) (6)

CITY OF MIAMI, A MUNICIPAL  
CORPORATION OF THE STATE  
OF FL (b) (6)

CESAR H. ODIO  
City Manager

Date Executed: 10-22-87

ATTEST:

(b) (6)

MATTY HIRAI  
City Clerk

LUCIA A. DOUGHERTY  
City Attorney

CGK/wpc/ebg/pb/rd/M078  
10/22/87

STATE OF FLORIDA)  
                                  )SS:  
COUNTY OF DADE     )

BEFORE ME personally appeared Maxie E. Poole, Contracting  
Officer for the United States of America, and acknowledges the  
foregoing for the purposes herein described this 22<sup>nd</sup> day of  
October, 1987.

(b) (6)

NOTARY PUBLIC  
State of Florida at Large

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. APR 27, 1991  
BONDED THRU GENERAL INS. UND.

STATE OF FLORIDA)  
                                  )SS:  
COUNTY OF DADE     )

BEFORE ME personally appeared Cesar H. Odio, City Manager  
for the City of Miami, Florida and acknowledges the foregoing for  
the purposes herein described this 22<sup>nd</sup> day of  
October, 1987.

(b) (6)

NOTARY PUBLIC  
State of Florida at Large

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES MAY 19, 1991  
BONDED THROUGH ASHTON AGENCY, INC.

EXHIBIT A

LEGAL DESCRIPTION  
MIAMI NORTH B/41  
BLOCK 78N

Address: 438-44-46 N.E. 1 Avenue  
Folio No. 01-0107-80-1010  
Legal  
Description: N 100' of Lots 1 & 2, Blk 78 less N  
36' thereof & less E 10' of Lot 1

Address: 498 N.E. 1 Avenue  
Folio No. 01-0107-80-1020  
Legal  
Description: South 50' of Lots 1 & 2 less E 10'  
of Lot 1 for St. Blk 78

Address: Unknown  
Folio No. 01-0107-80-1030  
Legal  
Description: Lot 3 less Beg. NW cor. Lot 3, S  
29.50', E 50.36', N 36', S 49.95'  
to POB & all of Lot 18 & S 100' of  
Lots 19 & 20 Blk 78

Address: Unknown  
Folio No. 01-0107-80-1031  
Legal  
Description: Parcel D-2058 a/k/a Portion of Lot  
3 less N 10' Blk 78 desc. beg. NW  
cor Lot 3 thence S 29.50' E 50.36'  
N 36' S 49.95' to POB less N 10'

Address: 54 N.E. 5 Street  
Folio No. 01-0107-80-1040  
Legal  
Description: Parcel D-205A a/k/a Lot 4 Blk 78

Address: 46 N.E. 5 Street  
Folio No. 01-0107-80-1050  
Legal  
Description: Lot 5 less N 10' Blk 78

LEGAL DESCRIPTION  
MIAMI NORTH B/41  
BLOCK 78N

Address: 38 N.E. 5 Street  
Folio No. 01-0107-80-1060  
Legal  
Description: Lot 6 less N 10', Blk 78

Address: 33 N.E. 4 Street  
Folio No. 01-0107-80-1160  
Legal  
Description: E 12.5' of Lot 14 & W 41.5' of Lot  
15 Blk 78

Address: 43 N.E. 4 Street  
Folio No. 01-0107-80-1170  
Legal  
Description: E 8.5' of Lot 15 & Lot 16 Blk 78

Address: 51 N.E. 4 Street  
Folio No. 01-0107-80-1180  
Legal  
Description: Lot 17, Blk 78

Address: 420 N.E. 1 Avenue  
Folio No. 01-0107-80-1200  
Legal  
Description: N 50' of Lots 19 & 20 Blk 78

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

#### 47. FAR 52.229-5--TAXES--CONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO (APR 1934)

The term "local taxes," as used in the Federal, State, and local taxes clause of this contract, includes taxes imposed by a possession of the United States or by Puerto Rico.

#### ADJUSTMENTS

#### 48. FAR 52.243-4--CHANGES (APR 1934)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes--

(1) In the specifications (including drawings and designs);

(2) In the method or manner of performance of the work;

(3) In the Government-furnished facilities, equipment, materials, services, or site; or

(4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for a "proposal for adjustment" (hereafter referred to as proposal) based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must submit any proposal under this clause within 30 days after (1) receipt of a written change order under paragraph (a) above or (2) the furnishing of a written notice under paragraph (b) above, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) A proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

#### 69. CSAR 552.243-71--EQUITABLE ADJUSTMENTS (APR 1934)

(a) The provisions of the Changes clause prescribed by FAR 52.243-4 are supplemented as follows:

(i) Upon written request, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in the "Equitable Adjustments" clause, for work involving contemplated changes covered by the request. The proposal shall be submitted within the time limit indicated in the request or any extension of such time limit as may be subsequently granted. The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be submitted in the following form:

(i) Proposals totaling \$5,000 or less shall be submitted in the form of a lump sum proposal with supporting information to clearly relate elements of cost with specific items of work involved to the satisfaction of the Contracting Officer, or his/her authorized representative.

(ii) For proposals in excess of \$5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

#### Direct Costs

Material quantities by trades and unit costs (Manufacturing burden associated with material fabrication performed will be considered to be part of the material costs of the fabricated item delivered to the job site)

Labor breakdown by trades and unit costs (Identified with specific item of material to be placed or operation to be performed)

Construction equipment exclusively necessary for the change

Costs of preparation and/or revision to shop drawings resulting from the change

Workmen's Compensation and Public Liability Insurance

Employment taxes under FICA and FUTA

Bond Costs - when size of change warrants revision

#### Overhead, Profit and Commission

(2) The allowable overhead shall be determined in accordance with the Contract Cost Principles and Procedures in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31) in effect on the date of this contract. The percentages for profit and commission shall be negotiated and may vary according to the nature, extent and complexity of the work involved, but in no case shall exceed the following, unless the Contractor demonstrates entitlement to a higher percentage:

	<u>Overhead</u>	<u>Profit</u>	<u>Commission</u>
To Contractor on work performed by other than his own forces ----	--	--	10%
To first tier subcontractor on work performed by his subcontractors	--	--	10%
To Contractor and/or the subcontractors for that portion of the work performed with their respective forces ----	To be negotiated	10%	--

Not more than four percentages will be allowed regardless of the number of tier subcontractors. The contractor shall not be allowed a commission on the commission received by a first tier subcontractor. Equitable adjustments for deleted work shall include credits for overhead, profit and commission. On proposals covering both increases and decreases in the amount of the contract, the application of overhead and profit shall be on the net change in direct costs for the Contractor or subcontractor performing the work.

(3) The Contractor shall submit with the proposal his request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the contract in its entirety.

(4) In considering a proposal, the Government shall make check estimates in detail, utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment.

(5) After receipt of a proposal, the Contracting Officer shall act thereon, within 30 days; provided however, that when the necessity to proceed with a change does not allow time properly to check a proposal or in the event of failure to reach an agreement on a proposal, the Government may order the Contractor to proceed on the basis of price to be determined at the earliest practicable date. Such price shall not be more than the increase or less than the decrease proposed.

(6) If a mutually acceptable agreement cannot be reached, the Contracting Officer may determine the price unilaterally.

(b) The provisions of the Differing Site Conditions clause prescribed by FAR 52.236-2, are supplemented as follows: The Contractor shall submit all claims for equitable adjustment in accordance with, and subject to the requirements and limitations set out in paragraph (a) of this "Equitable Adjustments" clause.

#### 70. GSAR 552.243-70--PRICING OF ADJUSTMENTS (APR 1984)

When costs are a factor in any determination of a

contract adjustment pursuant to the "Changes" clause or any other clause of this contract, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31) in effect on the date of this contract.

#### AUDITS

#### 71. FAR 52.214-26--AUDIT--SEALED BIDDING (APR 1985)

(a) Cost or pricing data. If the Contractor has submitted cost or pricing data in connection with the pricing of any modification to this contract, unless the pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contracting Officer or a representative who is an employee of the Government shall have the right to examine and audit all books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing or performing the modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. In the case of pricing any modification, the Comptroller General of the United States or a representative who is an employee of the Government shall have the same rights.

(b) Availability. The Contractor shall make available at its office at all reasonable times the materials described in paragraph (a) above, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(c) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (c), in all subcontracts over \$10,000 under this contract, altering the clause only as necessary to identify properly the contracting parties and the contracting office under the Government prime contract.

#### 72. FAR 52.214-27--PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--MODIFICATIONS--SEALED BIDDING (APR 1985)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, of more than \$100,000 except that this clause does not apply to any modification for which the price is--

" " EXHIBIT B  
PAGE 2 OF

- (1) Based on adequate price competition;
- (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
- (3) Set by law or regulation.

(b) If any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, or (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) above.

(c) Any reduction in the contract price under paragraph (b) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

73. FAR 52.214-25--SUBCONTRACTOR COST OR PRICING DATA--MODIFICATIONS--SEALED BIDDING (APR 1985)

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed \$100,000 and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed \$100,000 when entered into, or pricing any subcontract modification involving aggregate increases and/or decreases in cost, plus applicable profits, expected to exceed \$100,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is--

- (1) Based on adequate price competition;
- (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
- (3) Set by law or regulation.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in subsection 15.304-4 of the Federal Acquisition Regulation that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each

subcontract that exceeds \$100,000 when entered into.

74. FAR 52.213-2--AUDIT--NEGOTIATION (APR 1954)

(a) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of these, the Contractor shall maintain--and the Contracting Officer or representatives of the Contracting Officer shall have the right to examine and audit--books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(b) Cost or pricing data. If, pursuant to law, the Contractor has been required to submit cost or pricing data in connection with pricing this contract or any modification to this contract, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.

(c) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(d) Availability. The Contractor shall make available at its office at all reasonable times the materials described in paragraphs (a) and (b) above, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation, or for any longer period required by statute or by other clauses of this contract. In addition--

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and

(2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are disposed of.

(e) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (e), in all subcontracts over \$10,000 under this contract, altering the clause only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

" "

EXHIBIT B

PAGE 3 of 3

## EXHIBIT C

For purposes of this Exhibit, the term Contractor may include Developer and/or any other person or entity who contracts with the CITY to build the Project.

### A. 52.222-26 - Equal Opportunity (APR 1984)

(Applicable to leases which exceed \$10,000)

- a. If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause. b. During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (2) The Contractor shall take affirmative action to ensure the applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of



compensation, and (viii) selection for training, including apprenticeship.

- (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting officer that explain this clause.
- (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations,

and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

- (8) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.
- (9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this lease may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law. If this provision is exercised, the Lessee will reimburse the CITY its reasonable direct debts, assume responsibility for bond payments and in return receive a deed from the CITY.
- (10) The Contractor shall include the terms and conditions of subparagraph (b)(1) through (11) of

this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

c. Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

B. 52.222-21 Certification of Nonsegregated Facilities (APR 1984)

a. "Segregated facilities", as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or

entertainment areas, transportation and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

b. By the submission of this offer, the offer certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offer agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

c. The offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will --

1. Obtain identical certification from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;
2. Retain the certifications in the files; and
3. Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certification for specific time periods).

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR  
CERTIFICATIONS OF NONSEGREGATED FACILITIES

A certification of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001. (Approved by OMB under Control Number 1215-0072.)

C. 52.219-8 - Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985)

(Applicable to leases which exceed \$10,000.)

- a. It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

- b. The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.
- c. As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern--
1. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
  2. Whose management and daily business operations are controlled by one or more of such individuals.

The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian-Indian

Americans and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to Section 8(a) of the Small Business Act.

D. 52.203.1 - Officials Not to Benefit (APR 1984)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

E. 52.215-1 - Examination of Records by Comptroller General (APR 1984)

- a. This clause applies if this contract exceeds \$10,000 and was entered into by negotiation.
- b. The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under this contract or for any shorter period specified in Federal Acquisition Regulation (FAR) Subpart 4.7, Contractor Records Retention, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract.
- c. The Contractor agrees to include in first-tier subcontracts under this contract a clause to the effect that the Comptroller General or a duly authorized

representative from the General Accounting Office shall, until 3 years after final payment under the subcontract or for any shorter period specified in FAR Subpart 4.7, have access to and the right to examine any of the subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. "Subcontract", as used in this clause, excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

- d. The period of access and examination in paragraphs (b) and (c) above for records relating to (1) appeals under the Disputes clause, (2) litigation or settlement of claims public utility services at rates established for uniform applicability to the general public.

F. 552.215-70 - Examination of Records by GSA (APR 1984)  
(Applicable to leases which exceed \$10,000.)

The Contractor agrees that the Administrator of General Services or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under this contract or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulations (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books,



documents, papers, and records of the Contractor involving transactions related to this contract or compliance with any clauses thereunder. The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Administrator of General Services or any of his duly authorized representative shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, records of such sub-Contractor, involving transactions related to the subcontract or compliance with any clauses thereunder. The term "subcontract" as used in this clause excludes (a) purchase orders not exceeding \$10,000 and (b) subcontracts for purchase orders for public utility services at rates established for uniform applicability to the general public.

G. 52.222-35 - Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984)

(Applicable to leases which exceed \$10,000.)

a. Definitions.

"Appropriate office of the State employment service system", as used in this clause, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the

District of Columbia, Guam, Puerto Rico, Virgin Island, American Samoa, and the Trust Territory of the Pacific Islands.

"Openings that the Contractor proposes to fill from within its own organization", as used in this clause, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.

"Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

"Suitable employment openings", as used in this clause--

1. Includes, but is not limited to, openings, that occur in jobs categorized as--
  - i. Production and nonproduction;
  - ii. Plant and office;
  - iii. Laborers and mechanics;
  - iv. Supervisory and nonsupervisory;
  - v. Technical; and
  - vi. Executive, administrative, and

professional positions compensated on a salary basis of less than \$25,000 a year; and

2. Includes full-time employment, temporary employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as--

- i Employment;
- ii Upgrading;
- iii Demotion or transfer;
- iv Recruitment;

- v Advertising;
- vi Layoff or termination;
- vii Rates of pay or other forms of compensation and;
- viii Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veteran's Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings.

- (1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent

corporate affiliate is exempt from this requirement.

- (2) State and local Government agencies holding Federal Contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.
- (3) The listing of suitable employment openings with the State Employment Service System is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive

orders or regulations concerning nondiscrimination in employment.

- (4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State Employment Service System, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.
- (5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (1) the

Government's needs cannot reasonably be supplied, (ii) listing would be contrary to National security, or (iii) the requirement of listing would not be in the Government's interest.

(d) Applicability.

(1) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The terms of paragraph (c) above of this clause do to apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This conclusion does not apply to a particular

opening once an employer decides to consider applicants outside of its own organization nor employer-union arrangement for that opening.

(e) Postings.

(1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam Era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, OFCCP, Department of Labor (Director), and provided by or through the Contracting Officer.



(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Contractor shall include the items of the clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations or orders of the Secretary. The Contractor shall act as specified by the

Director to enforce the terms,  
including action for noncompliance.

H. 52.222-36 - Affirmative Action for Handicapped Workers

(a) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as--

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 USC 793) (the Act), as amended.

(b) Postings.

- (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, OFCCP, Department of Labor (Director), and provided by or through the Contracting Officer.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

- (d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders

of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

I. 52.219-9 - Small Business and Small Disadvantaged Business Subcontracting Plan (APR 1984)

(Applicable to leases which exceed \$500,000.)

- (a) This lease incorporates the clause at FAR 52.219-9 by reference. It has the same force and effect as if it were included in full text.
- (b) If the Offeror indicates he is not a small business as defined in this lease, and the value of this lease over its firm term or for any option period exceeds \$500,000., he will be required to execute an acceptable small business subcontracting plan. Said subcontracting plan will be incorporated into the contract as a material part thereof. If the subcontracting plan is required for only the option period, it shall be executed and incorporated into the contract for the option period prior to exercise of the option. Copies of the requirements and a suggested format are available from the Contracting Officer upon request.

J. Minority Participation

The parties will be required to comply with all applicable federal, state and local affirmative action legislation and regulations, including City of Miami Minority and Women Business Affairs and Procurement Ordinance No. 10062. For

purposes of accomplishing this project whether by public or private means, the more restrictive City of Miami legislation and regulations shall apply.

I. Contract Disputes Act

- a. This contract is subject to the Contract Disputes Act of 1978 (41 USC 601-613) (the Act).
- b. Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause..
- c. "Claim", as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract's clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is

disputed either as to liability or amount or is not acted upon in a reasonable time.

- d. 1. A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the GOVERNMENT against the Contractor shall be subject to a written decision by the Contracting Officer.
2. For Contractor Claims exceeding \$50,000, the Contractor shall submit with the claim a certification that --
  1. The claim is made in good faith;
  - ii. Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and
  - iii. The amount requested accurately reflects the contract adjustment for which the Contractor believes the GOVERNMENT is liable.
3. 1. If the Contractor is an individual, the certification shall be executed by that individual.
- ii. If the Contractor is not an individual, the certification shall be executed by --
  - a. A senior company official in charge at the Contractor's plant or location involved; or
  - b. An officer or general partner of the Contractor having overall responsibility

for the conduct of the Contractor's affairs.

- e. For Contractor Claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor Certified Claims over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- f. The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.
- g. The GOVERNMENT shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each six month period as fixed by the Secretary of Treasury during the pendency of the claim.
- h. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action

arising under the contract, and comply with any decision of the Contracting Officer.



H. J. Res. 738—353

*This was a  
prospectus  
project.*

the purposes of this authorization, buildings constructed pursuant to the Public Buildings Purchase Contract Act of 1954 (40 U.S.C. 310), the Public Buildings Amendments of 1972 (40 U.S.C. 490), and buildings under the control of another department or agency where alterations of such buildings are required in connection with the moving of such other department or agency from buildings then, or thereafter to be, under the control of the General Services Administration shall be considered to be federally owned buildings: *Provided further*, That none of the funds available to the General Services Administration shall be available for expenses in connection with any construction, repair, alteration, and acquisition project for which a prospectus, if required by the Public Buildings Act of 1959, as amended, has not been approved, except that necessary funds may be expended for each project for required expenses in connection with the development of a proposed prospectus: *Provided further*, That funds available in the Federal Buildings Fund may be expended for emergency repairs when advance approval is obtained from the Committees on Appropriations of the House and Senate: *Provided further*, That amounts necessary to provide reimbursable special services to other agencies under section 210(f)(6) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(f)(6)) and amounts to provide such reimbursable fencing, lighting, guard booths, and other facilities on private or other property not in Government ownership or control as may be appropriate to enable the United States Secret Service to perform its protective functions pursuant to 18 U.S.C. 3056 as amended, shall be available from such revenues and collections: *Provided further*, That the Administrator of General Services is authorized, under section 210(h) of the Federal Property and Administrative Services Act of 1949, to acquire a building not to exceed 250,000 sq. ft., constructed or acquired by or on behalf of the State of Florida or a political subdivision thereof, by lease not to exceed 30 years, in Miami, Florida, on such terms and conditions as he deems appropriate. These terms and conditions may include an option to permit the Federal Government, if the Administrator deems that it is in the best interest of the Federal Government, to execute a succeeding lease: *Provided further*, That the Administrator of General Services is authorized, under section 210(h) of the Federal Property and Administrative Services Act of 1949, to acquire a building not to exceed 600,000 sq. ft., constructed or acquired by or on behalf of the State of Illinois or a political subdivision thereof, by lease not to exceed 30 years, in Chicago Illinois, on such terms and conditions as he deems appropriate. These terms and conditions may include an option to permit the Federal Government, if the Administrator deems that it is in the best interest of the Federal Government, to execute a succeeding lease: *Provided further*, That revenues and collections and any other sums accruing to this fund during fiscal year 1987 excluding reimbursements under section 210(f)(6) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(f)(6)) in excess of \$2,885,856,000 shall remain in the Fund and shall not be available for expenditure except as authorized in appropriation Acts: *Provided further*, That notwithstanding this or any other provision of this Act, Section 623 of the Treasury, Postal Service, and General Government Appropriations Act as contained in this Act shall apply only to the rural electrification program in the State of Alaska.

the purposes of this authorization, buildings constructed pursuant to the Public Buildings Purchase Contract Act of 1954 (40 U.S.C. 356), the Public Buildings Amendments of 1972 (40 U.S.C. 490), and buildings under the control of another department or agency where alterations of such buildings are required in connection with the moving of such other department or agency from buildings then, or thereafter to be, under the control of the General Services Administration shall be considered to be federally owned buildings: *Provided further*, That none of the funds available to the General Services Administration shall be available for expenses in connection with any construction, repair, alteration, and acquisition project for which a prospectus, if required by the Public Buildings Act of 1959, as amended, has not been approved, except that necessary funds may be expended for each project for required expenses in connection with the development of a proposed prospectus: *Provided further*, That funds available in the Federal Buildings Fund may be expended for emergency repairs when advance approval is obtained from the Committees on Appropriations of the House and Senate: *Provided further*, That amounts necessary to provide reimbursable special services to other agencies under section 210(f)(6) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(f)(6)) and amounts to provide such reimbursable fencing, lighting, guard booths, and other facilities on private or other property not in Government ownership or control as may be appropriate to enable the United States Secret Service to perform its protective functions pursuant to 18 U.S.C. 3056 as amended, shall be available from such revenues and collections: *Provided further*,

That the Administrator of General Services is authorized, under section 210(h) of the Federal Property and Administrative Services Act of 1949, to acquire a building not to exceed 250,000 sq. ft., constructed or acquired by or on behalf of the State of Florida or a political subdivision thereof, by lease not to exceed 30 years, in Miami, Florida, on such terms and conditions as he deems appropriate. These terms and conditions may include an option to permit the Federal Government, if the Administrator deems that it is in the best interest of the Federal Government, to execute a succeeding lease: *Provided further*, That the Administrator of General Services

is authorized, under section 210(h) of the Federal Property and Administrative Services Act of 1949, to acquire a building not to exceed 600,000 sq. ft., constructed or acquired by or on behalf of the State of Illinois or a political subdivision thereof, by lease not to exceed 30 years, in Chicago Illinois, on such terms and conditions as he deems appropriate. These terms and conditions may include an option to permit the Federal Government, if the Administrator deems that it is in the best interest of the Federal Government, to execute a succeeding lease: *Provided further*, That revenues and collections and any other sums accruing to this fund during fiscal year 1987 excluding reimbursements under section 210(f)(6) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(f)(6)) in excess of \$2,385,856,000 shall remain in the Fund and shall not be available for expenditure except as authorized in appropriation Acts: *Provided further*, That notwithstanding this or any other provision of this Act, Section 623 of the Treasury, Postal Service, and General Government Appropriations Act as contained in this Act shall apply only to the rural electrification program in the State of Alaska

100 STAT. 3341-352